

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition (ST) NO. 30457 OF 2016**

|                                     |                |
|-------------------------------------|----------------|
| Shri. Mangesh Sonu Karpe            | ...Petitioner  |
| <i>Versus</i>                       |                |
| Shri Jankiram Ganpat Karpe And Ors. | ...Respondents |

....

Mr.P.B. Shah a/w. Mr. Kayval P. Shah, Advocate for Petitioner.  
Mr.Satyajeet P. Dighe, Advocate for Respondents No.1 & 12.

....

CORAM : R. G. KETKAR, J.

DATE : 5<sup>th</sup> DECEMBER, 2016

P.C.

1. Heard Mr. P.B. Shah, learned Counsel for the petitioner and Mr. Satyajeet Dighe, learned Counsel for respondents No.1 & 12, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.5', has challenged the judgment and order dated 23.9.2016 passed by the learned 3<sup>rd</sup> Jt. Civil Judge, Senior Division, Nashik below Exhibit-17 in Special Civil Suit No.575/2013. By that order, the learned trial Judge rejected the application made by defendant No.5 for rejecting the plaint on the ground that defendant No.2 Partnership Firm is not registered and consequently the suit is

not maintainable in view of Section 69 of the Indian Partnership Act, 1932 (for short, 'Act').

3. Mr. Shah submitted that respondent No.1 hereinafter referred to as the plaintiff, has instituted suit *inter alia* praying for declaration that the property described in paragraph-1(a)(ii), (iii), 1(b)(ii) to (x) are owned by defendant No.2 partnership firm and for dissolution of the Partnership Firm and for accounts; for partition and separate possession of other properties. He submitted that defendant No.5 filed application under Order VII Rule 11 of C.P.C. on the ground that the plaintiff has not disclosed the details of defendant No.2 Partnership Firm. The plaintiff was called upon to produce the documents showing the registration of defendant No.2 Firm. However, the plaintiff gave vague reply and did not disclose the particulars. In view of Section 69 of the Act, as the Partnership Firm is not registered, the suit itself is not maintainable and accordingly the suit is liable to be dismissed.

4. Mr. Shah submitted that defendant No.5 filed application on 16.4.2014 for framing preliminary issue. By order dated 25.6.2015, the learned trial Judge framed preliminary

issue as to whether the suit is liable to be dismissed on the ground that the the Partnership Firm is not registered under the Act. By the impugned order, the learned trial Judge has rejected the application. He has taken me through Section 69 of the Act to contend that in view of thereof the suit is not maintainable.

5. On the other hand, Mr. Dighe relied upon the decision of Apex Court in the case of **V. Subramaniam v. Rajesh Raghuvandra Rao, 2009(5) Mh.L.J. 120** to contend that Apex Court has held that Section 69(2A) is *ultra vires* of the Constitution. He submitted that in view of Section 69(3)(a) as the suit is for dissolution of the Partnership Firm and for accounts of the dissolved Firm, sub-sections (1) and (2) of section 69 of the Act are not applicable.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Sections 69(1), (2A) and 3(a) of the Act read thus :

**“69. Effect of non-registration:--** (1) No suit to enforce a right arising from a contract or

conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

**(2)** No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

**(2A)** No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm :

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a

firm for accounts of a dissolved firm or to realise the property of a dissolved firm.

(3) The provisions of sub- sections (1) and (2) shall apply also to a claim of set- off or other proceeding to enforce a right arising from a contract, but shall not affect,-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or”

7. In the case of **V. Subramaniam** (supra), Apex Court has declared Section 69(2A) *ultra vires* of the Constitution. In view of section 69(3)(a), the provisions of sub-sections (1) and (2) do not affect the suit for enforcement of any right for dissolution of the Firm or accounts for any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm.

8. As noted earlier, amongst other reliefs, the plaintiff has also claimed the relief of dissolution of Partnership Firm and taking all accounts amongst other reliefs. That apart, perusal of the plaint shows that the plaintiff has prayed for partition of the

properties which are not owned by defendant No.2 Partnership Firm. The plaintiff has asserted that some of the properties are ancestral properties and some of the properties are acquired by the parties and not by the Partnership Firm. In view thereof, it cannot be said that the suit is not maintainable as defendant No.2 Partnership Firm is not a registered firm. It, therefore, cannot be said the the plaint is liable to be rejected under Order VII Rule 11(d) of C.P.C. in view of Section 69 of the Act. Hence, petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)